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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,364	10/07/2003	Charles A. Miller	RWZ/78U	4643
26875 7590 10/16/2008 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER				
KUMAR, RAKESH				
ART UNIT		PAPER NUMBER		
3651				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/680,364

Applicant(s)

MILLER, CHARLES A.

Examiner

RAKESH KUMAR

Art Unit

3651

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-84 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 30, 31, 48, 49 and 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-29, 32-47, 50-60 and 62-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 60/496,080.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/23/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Final Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-11,14,15,17-29,32,33,35-39,43-47,51,53-59,63,64-67,70,71,73,74 and 76-84 are rejected under 35 U.S.C. 102(b) as being anticipated by Sylvie (FR 2761342A1).

Referring to claims 1,19,20,21,23,24,37,43,51,54,55,63,65,66,74,83 and 84.

Sylvie discloses a carton for containing a plurality of articles (Figure 11) comprising:

a plurality of walls including a bottom wall (2) spaced from a top wall (33; Figure 11), a pair of spaced side walls (3) and a pair of spaced end walls (6,9,18 and 36) the side (3) and end walls (6,9,18 and 36) extending between the top (33) and bottom walls (2);

a plurality of flaps (9) extending from at least some of the walls (Figure 10), the end walls (6,9,18 and 36) being formed by combinations of the flaps (see Figure 11 ; end wall);

a corner of the carton (top corner; Figure 11) formed by one of the end walls (36) and either the top wall (33) or the bottom wall;

a dispenser portion (after removability of member 12) for dispensing articles from the carton, the dispenser portion (12) of the carton being defined by at least one tear line (6) formed in more than one of the flaps (tear line 17 in member 18) and at least in part from the corner (top corner; Figure 11) to define a dispenser opening (as member 12 is removed) for exposing an article for removal from the carton; and a finger hole (15) for grasping the dispenser portion (12), the finger hole (15) being located opposite from the corner (top corner; Figure 11) and at least in part in the bottom wall (2),

wherein the dispenser portion (12) does not include either of the side walls (3) and the flap (6) extending from the bottom wall (2) is at least one of the flaps through which the tear line (see tear line in member 12; Figure 10) is formed.

Referring to claim 2. Sylvie discloses a carton wherein the corner (top corner; Figure 11) is formed by one of the end walls (36) and the top wall (33).

Referring to claims 3, 18, 22 and 36. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein the dispenser portion (12) is hingedly attached (see Figure 6) to the top wall (member 12 can be disengaged up to corner of member 33).

Referring to claims 6 and 25. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein the dispenser portion (12) is confined to the end wall (36) and the top wall (33).

Referring to claims 7, 26, 44 and 70. Sylvie discloses a carton wherein the corner (top corner; Figure 11) at least one retaining panel (panels 9) adjacent the dispenser opening (12) to retain the remaining articles in the carton.

Referring to claims 8, 27, 45, 64, 67, 73, 76 and 77. Sylvie discloses a carton wherein the corner (top corner; Figure 11) comprising a pair of the retaining panels (9), each of which is positioned adjacent to one of the side panels (3).

Referring to claims 9, 28, 38, 46, 59, 71 and 78. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein a height of the at least one retaining panel (9) is over half of the height of the one end wall (6; as seen in Figure 11).

Referring to claims 10, 29, 39, 47, 58 and 79-82. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein a width of the at least one retaining panel (9) is less than half of the width of the one end wall (6; as seen in Figure 11).

Referring to claim 11. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein the dispenser opening (12) extends substantially the entire height of the one end wall (6; Figure 11).

Referring to claims 14, 32 and 57. Sylvie discloses a carton wherein the corner (top corner; Figure 11) a pair of spaced tear lines (42) each extending through the one end wall (6).

Referring to claims 15, 33 and 56. Sylvie discloses a carton wherein the corner (top corner; Figure 11) wherein each tear line (42) extends to the top wall (33).

Referring to claims 17,35 and 53. Sylvie discloses a carton wherein the corner (top corner; Figure 11) a fold line (corner of top wall 33 and edge of member 36; Figure 11) extending through the top panel (33) and joining the tear lines (two tear lines 42).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12,40,50,60 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie in view of Wood (US 4,558,816).

Referring to claims 12,40, 50,60 and 72. Sylvie discloses all claimed limitations of claim 12 however Sylvie does not disclose a handle opening in the top wall. Wood discloses a article dispenser (Figure 1) wherein a handle opening (27; Figure 1) is disposed in the top wall (1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sylvie to include a handle opening in the top wall of the carton as taught by Wood because it would make carrying the carton easier for a user.

Claims 13 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie in view of Wood as applied to claim 12 above, and further in view of Brintazzoli (US 5,348,219).

Referring to claims 13 and 41. Sylvie in view of Wood discloses all claimed limitations of claim 13 however Sylvie they do not disclose a dispenser portion releasably inserted into a handle opening.

Brintazzoli discloses dispenser opening (22; Figure 2) wherein the dispenser portion is adapted to be releasably inserted into the slit opening (18) disposed on the top wall of the dispenser.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sylvie in view of Wood and Brintazzoli to include a dispenser portion wherein the tab is releasably inserted into a handle opening disposed on the top wall because it would allow the dispenser portion to be secured to the carton as the articles are removed.

Claims 16,34,42,52,62,68,69 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvie.

Referring to claims 16, 34,52,62,69 and 75. Sylvie discloses all claimed limitations of claim 16 however Sylvie does not disclose tear line extends along a juncture between the top wall and one of the side walls.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sylvie to extend the size of the

dispenser portion such that the tears lines extend along a juncture between the top wall and one of the side walls because the dispenser portion size would be larger thus, making removable of article easier.

Referring to claims 42 and 68. See claim rejections 14, 15, 16 and 17 above.

Response to Arguments

Applicant's arguments filed 06/13/2008 have been fully considered but they are not persuasive.

In response to applicant's argument that Sylvie is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Sylvie disclose a package Figure 11 formed from a blank as shown in Figure 10. The term package as used by Sylvie is considered to be a container or a carton used to house a plurality of products within the dispenser. The limitation as recited in the applicant's claims read on the teachings of Sylvie. The package of Sylvie is used to house a plurality of article, once the tab 12 is removed a dispenser portion is created in the dispenser to allow any articles within the housing of the dispenser to be removed through the opening 12. Once all articles contained are removed the dispenser portion 12 aids in the deconstruction of the carton. However, applicants claimed limitations do not recite any limitations pertaining to the deconstruction of the carton therefor the

deconstruction process of the apparatus of Sylvie is irrelevant. Furthermore, the limitations of the claim read on the applicants claimed limitations as recited in the claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RAKESH KUMAR** whose telephone number is (571) 272-8314. The examiner can normally be reached on **M-F 8 AM to 4:30 PM**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/
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